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No. 76-580

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOHN B. BRECKINRIDGE, ET AL., PETITIONERS

v.

DONALD H. RUMSFELD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 537 F. 2d 864. The opinion of the district court (Pet. App. 9a-30a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 9, 1976 (Pet. App. 34a-35a), and a timely petition for rehearing was denied on August 13, 1976. The petition for a writ of certiorari was filed on October 27, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an environmental impact statement was required for a reduction-in-force at the Lexington-Bluegrass

Army Depot, Lexington, Kentucky, when a threshold assessment demonstrated that the only effects of the reduction will be short-term unemployment and the inconvenience of employee dislocation.

STATUTE INVOLVED

Section 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 853, as amended, 42 U.S.C. 4332(2)(C), is reproduced in the petition at 5-6.

STATEMENT

This litigation arose as the result of the November 22, 1974, announcement by the Secretary of Defense of 111 separate realignments of military units to reduce defense costs in the aftermath of the American withdrawal from Vietnam (Pet. App. 2a). One such realignment, involving the transfer of the communications equipment repair mission from Lexington to depots at Sacramento, California, and Tobyhanna, Pennsylvania, will result in a reduction at the Lexington Depot of approximately 2,630 civilian jobs and reduce costs by an estimated $37,000,000 per year (Pet. App. 2a, 12a, 13a). Under the realignment plan, the Lexington Depot will, however, continue to be an active installation employing about 1,600 civilian employees.

Prior to the November 22, 1974, announcement, the Army had prepared an environmental assessment which concluded that the proposed action would not significantly affect the quality of the human environment in Kentucky, California, or Pennsylvania and, therefore, that no environmental impact statement was required (Pet. App. 3a). In addition, a report prepared under contract with Battelle Columbus Laboratories, a nongovernmental research institution, concluded that the economically viable Lexington area would suffer only

minimal short-term unemployment (Pet. App. 3a). Thereafter, the Army decided that an environmental impact statement was not required.

Alleging violations of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, as amended, 42 U.S.C. 4321 *et seq.*, petitioners sued to prevent the Army from transferring the mission from the Lexington-Bluegrass Army Depot. A hearing was held on September 26 and 27, 1975, on petitioners' motion for a preliminary injunction and the government's motion for summary judgment (Pet. App. 17a).[1] On October 31, 1975, the district court entered a preliminary injunction. The court did not find any significant environmental impact resulting from the reduction-in-force and indicated that it was unlikely any existed (Pet. App. 20a, n. 7, 21a, 23a and n. 10, 25a). Nevertheless, it found the Army's environmental impact assessment inadequate, and enjoined the Army from carrying out any phase of the realignment, pending completion of a final environmental impact statement (Pet. App. 32a).[2]

The court of appeals reversed (Pet. App. 1a-8a). The court noted that the Army's environmental impact assessment had concluded that there would be no

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[1]At the hearing, petitioners presented evidence regarding the wisdom of the military decision, evidence of possible economic impacts upon the community, and general, conclusionary evidence concerning loss of revenues needed for blacktopping streets and maintaining parks. The Army introduced its studies and other associated documents.

[2]The order of the court, although designated a preliminary injunction, granted plaintiffs all the relief to which they could be entitled—the preparation and circulation for comment of an environmental impact statement. The district court envisioned further proceeding only after the impact statement was completed. The order was clearly a final judgment. *Gillespie* v. *United States Steel Corp.*, 379 U.S. 148, 152-154, affirming 321 F. 2d 518, 519-522 (C.A. 6).

significant effect on the environment (Pet. App. 2a-3a), and that Battelle Columbus Laboratories' study of the possible socio-economic impacts of the action found that Lexington would suffer only minimal short-term unemployment as a result of the partial closure (Pet. App. 3a). Because NEPA was "never intended to reach social problems such as those presented here," the court held that no environmental impact statement was required (Pet. App. 8a).

ARGUMENT

1. The Army's environmental impact assessment, the report of Battelle Columbus Laboratories, and the court of appeals all concluded that the only effects of the proposed reduction-in-force are socio-economic in nature. As the court of appeals stated (Pet. App. 4a): "[T]here is no long term impact, no permanent commitment of a national resource and no degradation of a traditional environmental asset, but rather short-term personal inconveniences and short term economic disruptions." Petitioners do not dispute the holding of the court of appeals (Pet. App. 8a) that no environmental impact statement is required for federal actions which generate only socio-economic impacts, and no decision has been cited, nor are we aware of any, that holds to the contrary.

Petitioner's argument is principally directed at demonstrating that the Army's reduction-in-force will have environmental implications in addition to the socio-economic impacts previously identified. In order to prove that more is involved, petitioners go beyond the record in this case to assert that the ultimate result of the reduction will be the creation of an airport and an industrial

park (Pet. 18).[3] These allegations have no foundation; in any event, they give rise only to a dispute over the interpretation of facts. The resolution of the factual issue concerning the scope of the impact from an Army reduction-in-force is not an appropriate question for resolution by this Court.

2. Petitioners say the Court should grant the writ in order to resolve an issue concerning the standard of review of a federal agency's threshold determination about the need for an environmental impact statement (Pet. 23). Although petitioners claim that a decision by this Court on the standard of review issue would be "helpful" to litigants "here and elsewhere" (Pet. 29), that issue is not fairly presented by this case. The district court here did not articulate any standard for reviewing environmental assessments. As petitioners admit, the court of appeals did not have occasion to apply either of the standards petitioners discuss (Pet. 24). In any event, the asserted conflict between the circuits on this point was put to rest in *Kleppe* v. *Sierra Club*, No. 75-552, decided June 28, 1976, slip op. 19, where this Court held that the Secretary of the Interior's decision not to prepare a comprehensive impact statement on coal-related activities in the Northern Great Plains Region

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[3]Petitioners allege (Pet. 18) that the Army plans to convert in excess of 15,000 acres of land to new uses, including conversion to an industrial park and an airport. This allegation, raised for the first time before the court of appeals, has no foundation in the record. The government informed the court of appeals that there were presently no plans to make or allow such a conversion. The relevant Army study, which was introduced into evidence at trial, stated that all real property at Lexington would be retained with unused portions placed in a standby status. We further informed the court of appeals that should the Army ever decide to take such an action, it would, of course, comply with NEPA. See *Kleppe* v. *Sierra Club*, No. 75-552, decided June 28, 1976, slip op. 17, n. 20.

could be reversed only upon a showing of arbitrary action.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4]Petitioners urge that the record should be reopened to permit them to adduce further evidence (Pet. 25-27). Petitioners presented evidence for two days before the district court and then rested their case, stating that they were entitled to a permanent injunction (Tr. 268). Petitioners' contention that given a chance for further evidentiary development, they could improve their case is not an issue worthy of review by this Court.

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